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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,480	07/26/2006	Samuel Neto	13111-00037-US1	2574
23416 7590 08/11/2010 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899				
EXAMINER				
SAHA, BIJAY S				
ART UNIT		PAPER NUMBER		
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08/11/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,480

Applicant(s)

NETO ET AL.

Examiner

BIJAY S. SAHA

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/15/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

The amendment filed on 6/15/2010 has been entered.

Status of Application

The amended and original claims 1-10 and 12-20 are pending and presented for the examination. The original claim 11 has been withdrawn.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mauldine et al USP 4,977,126 (US'126) in view of Ruedinger et al USP 6,274,763 (US'763).

Regarding claims 1, 2 and 3: US'126 teaches the following:

- A process for the preparation of surface impregnated dispersed cobalt metal catalyst (Title)
- Support material in the form of titania-alumina, silica and alumina (Col. 6 lines 25)

- Weight of support material in the range of 0.4 kg to 22.0 kg (Col 3 Table 2)
- A fluidizing gas air (Col 6 line 58)
- Fluidizing air rate in the range of 55 to 375 CFM (approximately 95 to 640 m³/h) (Table 2 Col 5)
- Temperature in the range of 40 to 110°C (Table 2 Col 7) maintained by the fluidized gas (Col 4 line 14)
- A feed solution that contains various chemical constituents for the catalyst (Col 3 lines 56-59)
- Support particles are sprayed with a suspension containing catalyst constituents (Col 3 line 43)
- Feed rate of the solution in the range of 19 – 294 grams/min (Table 2 Col 4).

US'126 does not explicitly teach the following:

- Composition of the binder in the suspension or solution containing the catalyst constituents,
- quantity of the binder in the suspension or solution containing the catalyst constituents.

US'763 teaches the following:

- Vinyl acetate and vinyl laurate (Col 5 line 17) as binder (Col 6 line 23)
- Loading of binder as 29 gram (3%) in Example 1 (Col 5 line 47) and 43.5 gm (6%) (Col 7 line 41)

- Other components of catalysts such as TiO_2 and V_2O_5 (Col 5 line 47)

At the time of invention it would have been obvious to a person of ordinary skill to synthesize the catalyst utilizing the process parameters (US'126 teaching) and adding binder in the solution (US'763 teaching). The suggestion or motivation for doing so would have been to add the "[c]atalytically active mixed oxide such as V_2O_5 " (US'763) and prepare a "suspension" during "ball milling" and subsequent "drying" (US'763). In the absence of a binder, inorganic components do not adhere well to the support material.

With respect to Parameter K, taking the Table 2 Catalyst Preparation No. 1 through 14 data from US'126 and normalizing the numbers on the basis of support weight of 1 kg to 80 kg (as an example) can be normalized to meet the correct values of the air flow rate and solution rate. The values that be compared are temperature and binder concentration.

Hence, normalizing the US'126's support weight (from 0.4 kg to 22 kg) to applicant's support weight (from 60 kg to 240 kg), the range of flow gas and solution rate can be calculated analogous to the applicants' data.

Binder wt.% data as shown by US'763 is in the range of 3% to 6%.

Temperature is in the range of 40 °C to 110 °C.

Since the process parameters are in the range of applicants' data, it is expected that the K value will also follow.

Regarding the claim limitation of claim 1 "...for catalytic gas-phase oxidation of aromatic hydrocarbons...", examiner points out that the claim is drawn to "A process for producing a catalyst".

Regarding claims 4, 12 and 13, US'126 discloses air (Col 3 line 57).

Regarding claims 5, 6, 14, 15 and 16 US'763 discloses Two-coat catalyst (Col 5, Example 1) where 2nd spray suspension is sprayed on top of 1st spray suspension.

Regarding claims 7, 17, 18, 19 and 20, US'126 teaches application of supports in the form of spheres and extrudates in the size of 0.8 mm (Col 6 Table 1). US'126 does not explicitly teach catalyst in the shape of cylinders, rings or columns. Using the extrusion, desired size and shape can be obtained.

Regarding claim 8, US'126 discloses fluid bed equipped with nozzles entering either above or below to the bed; such devices being available from commercially available sources and suppliers (Col 4 lines 45-55).

Regarding claim 9, US'763 discloses application of TiO_2 and V_2O_5 (Col 5 line 47) in the range of 1-4 wt. %; US'763 also teaches ball milling process (Col 5 line 48). US'763 does not expressly teach a specific particle size range. It is commonly known in the art that ball milling process (taught by that US'763) is capable of producing the particle size in the range of 20 micron to 250 microns.

Regarding claim 10, US'763 discloses application of V_2O_5 (Col 5 line 47).

Summary

The claims 1-10 and 12-20 are rejected.

Response to Arguments

Applicants' arguments filed 6/15/2010 have been fully considered but they are not persuasive.

Regarding the comment "Claim 11 has been withdrawn by the Examiner", examiner points out that claim 11 was withdrawn by the applicants due to the restriction requirements.

Applicants argue "scale up the operating parameters....without the costly empirical trials....". Examiner points out that the independent claim 1 is drawn to "a process for producing a catalyst....comprises..".

Applicants argue "...for catalytic gas-phase oxidations of aromatic hydrocarbons," ...". Examiner points out that the claim has been drawn to "a process for producing a catalyst". Examiner further points out that "for catalytic gas phase oxidation" is an intended use of the catalyst. Examiner points out: MPEP 2111.02 PREAMBLE STATEMENTS RECITING PURPOSE OR INTENDED USE The claim preamble must be read in the context of the entire claim. The determination of whether preamble recitations are structural limitations or mere statements of purpose or use "can be resolved only on review of the entirety of the [record] to gain an understanding of what the inventors actually invented and intended to encompass by the claim". Examiner further points out that US'126 discloses "Process for the preparation of surface impregnated dispersed cobalt metal catalyst" where as US'763 discloses "catalyst for producing acetic acid by gas phase oxidation". Examiner further points that that the process parameters "Qgas, Qsusp, Bsusp, Msupport and Tgas" are heat and mass transfer parameters used in any chemical engineering process; these parameters are not exclusively limited to the process as defined by the applicants. Applicants have not produced any evidence that these parameters are utilized only in the applicants' process.

Applicants argue: "... $K = 0.020 Q_{gas} - 0.055 Q_{susp} + 7.500 B_{susp} - 0.667 M_{support} + 2.069 T_{gas} - 7$ satisfies the relationship $127.5 < K < 202$. At least this

feature of the independent claim cannot reasonably be considered to be suggested in Mauldin, Ruedinger, or any permissible combination thereof.The claimed method is not suggested in the applied citations, nor would a skilled artisan be guided on how to scale-up the processes suggested therein...". Examiner points out the following:

Parameter	Unit	Claim Range	Prior Art
Q_{gas}	m ³ /hour	3000-9000	95-640
Q_{susp}	gm/min	1000-3500	19-294
B_{susp}	%	2-18	3, 6
M_{support}	Kg	60-240	0.4-22
T_{gas}	°C	75-120	40-110
Constant	7	--	--

All the process variables have been disclosed by the prior art. A chemical process can run on a few kilograms of material as well as hundreds or thousands of kilograms of material with appropriate scale up factors.

Further, claimed range is the scale up of the prior art; for example, if the mass is increased from prior art of 0.4-22 kg to the claimed range of 60-240 kg, all other parameters such as Q_{gas} and Q_{susp} would be normalized to meet the mass value of the reaction. The absolute parameters such as the B_{susp} and T_{gas} are within the window of the claimed range. Since the process parameters are in the range of applicants' data, it is expected that the K value will also follow. Applicants provide the "K" value as 218 and argue it to be outside the range. Examiner points out that the number is for a

specific value 1 kg; the range of values is 0.4 kg to 22.0 kg. In the algorithm for "K", Q_{susp} and M_{support} values are subtractive ($-0.055 Q_{\text{susp}}$ and $-0.667 M_{\text{support}}$). Simply by taking the median values of the prior art, the "K" value comes out to be 133.53 which is within the range of 127.5 to 202. If the applicants select another range of M_{support} the normalized values of Q_{gas} and Q_{susp} would be proportionality change; however, "K" values would still remain within the range. It is a matter of scale up and normalization.

Applicants argue ".....applicants respectfully disagree with the assertion at page 8, third line from the bottom, that B_{susp} and T_{gas} are absolute parameters. ...". Applicants do not explicitly disclose the reason. Examiner points out that temperature in a chemical reaction is an independently tunable parameter; similarly, the polymer mass utilized in a binder is also an independent parameter since an artisan can choose a value of the binder mass and temperature based upon the design capacity of the reactor. Examiner points out that, irrespective of the argument, prior art teaches the claimed range of B_{susp} 3 and 6% compared to claimed range of 2 to 18% and T_{gas} 40-110C compared to claimed range of 75 to 120C.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BIJAY S. SAHA whose telephone number is (571) 270-5781. The examiner can normally be reached on Monday- Friday 8:00 a.m. EST - 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Mayes can be reached on (571) 272 1234. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BIJAY S SAHA/
Examiner, Art Unit 1793

August 10, 2010

/Melvin Curtis Mayes/
Supervisory Patent Examiner, Art Unit 1793